

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARK ORTIZ,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-01-0085

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the Superintendent's Conference Room at the Monroe Correctional Complex in Monroe, Washington, on March 6, 2003.

1.2 **Appearances.** Appellant Mark Ortiz was present and was represented by Joel Nichols, Attorney at Law, of Deno, Millikan, Dale, Decker & Petersen. Rob Kosin, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant accepted money in exchange for allowing inmates to have sex in a back room at the Washington State Reformatory Unit visiting

1 room. Respondent also alleged that Appellant warned an inmate that the inmate was going to be  
2 placed on a “dry cell watch.”

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4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep’t of Corrections, PAB No. D82-  
5 084 (1983); McCurdy v. Dep’t of Social & Health Services, PAB No. D86-119 (1987); Rainwater  
6 v. School for the Deaf, PAB No. D89-004 (1989); Harper v. WSU, PAB No. RULE-00-0040  
7 (2002); Skaalheim v. Dep’t of Social & Health Services, PAB No. D93-053 (1994).

## 8 9 **II. FINDINGS OF FACT**

10 2.1 Appellant was a Correctional Officer 2 and permanent employee of Respondent Department  
11 of Corrections at the Monroe Correctional Complex. Appellant and Respondent are subject to  
12 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.  
13 Appellant filed a timely appeal with the Personnel Appeals Board on October 10, 2001.

14  
15 2.2 Appellant began his employment with the Department of Corrections in September 1997 as  
16 a Correctional Officer 2 at the Monroe Correctional Complex. Appellant began working the swing  
17 shift in the Washington State Reformatory Unit visiting room in August 2000. Appellant has a  
18 good performance record and no history of prior formal disciplinary action.

19  
20 2.3 By letter dated September 11, 2001, Robert Moore, Superintendent of the Monroe  
21 Correctional Complex, informed Appellant of his suspension without pay from September 12, 2001  
22 through September 26, 2001, inclusive, to be followed immediately by his dismissal effective at the  
23 end of his regularly scheduled shift on September 27, 2001. Superintendent Moore charged  
24 Appellant with neglect of duty, gross misconduct, and willful violation of published employing  
25 agency policies for accepting money from inmates in exchange for favors, which was divided with  
26 Correctional Officer Benjamin Monaghan. On four separate occasions, CO Monaghan and

1 Appellant allowed inmates to have sex in a back room at the Washington State Reformatory Unit  
2 visiting room. Mr. Moore also alleged that Appellant and CO Monaghan warned an inmate on one  
3 occasion that the inmate was going to be placed on a “dry cell watch.”  
4

5 2.4 Appellant denied he engaged in the misconduct stated in the disciplinary letter. In making a  
6 determination, we carefully weighed the testimony of the witnesses and reviewed the documentary  
7 evidence in this case. We evaluated the testimony of Appellant’s co-worker, CO Monaghan, who  
8 testified that he and Appellant received and divided money from inmates in exchange for favors.  
9 We have compared CO Monaghan’s allegations against Appellant’s denials, and we have concluded  
10 that CO Monaghan is more credible. Further, although there were inconsistencies in the statements  
11 and testimony of the inmates and an inmate’s girlfriend, the information provided was generally  
12 consistent and described the same events.  
13

14 2.5 Therefore, based on a preponderance of the credible testimony, we find that the following  
15 events occurred:  
16

17 2.6 In approximately October 2000, the administration of the Washington State Reformatory  
18 heard rumors that inmates were accessing some place in the visiting room to have sex with their  
19 female visitors and having unsupervised opportunities to exchange drugs and contraband.  
20

21 2.7 The administration also heard that CO Benjamin Monaghan and Appellant were involved.  
22 CO Monaghan and Appellant worked together as visiting room officers on the same shift.  
23

24 2.8 An informant claimed that inmate White was going to receive drugs from his girlfriend  
25 during a visit. The staff subsequently placed inmate White on “dry cell watch,” which is a process  
26

1 in which an inmate suspected of receiving contraband is placed into a special unit where he is  
2 monitored to determine whether he ingested drugs.

3  
4 2.9 When the “dry cell watch” did not produce any drugs or evidence of drugs, the staff  
5 interviewed inmate White. Inmate White reported that he had received an unsigned note that  
6 “tipped him off” about being placed on “dry cell watch.” Inmate White believed the note came  
7 from Appellant and CO Monaghan because they approached him later and informed him that the tip  
8 would cost \$200.00.

9  
10 2.10 On April 2, 2001, Robert Hoover, the Corrections Specialist and Supervisor of the  
11 Investigations Unit, and Jack Warner, Acting Correctional Specialist, interviewed CO Monaghan  
12 and Appellant. CO Monaghan was interviewed first. CO Monaghan admitted that he and  
13 Appellant accepted money for allowing inmates and their female visitors to use the “back room” (a  
14 supply closet) in the visiting room and for warning an inmate that he was going on a “dry cell  
15 watch.” He also admitted the following:

- 16 • CO Monaghan and Appellant allowed inmate Rice to use the “back room” and they received  
17 \$50 from the inmate.
  - 18 • About two weeks later, CO Monaghan and Appellant allowed inmate Rice to use the “back  
19 room” again, and they received another \$50.00.
  - 20 • CO Monaghan and Appellant allowed inmate Davis to use the “back room” and they  
21 received \$100.00.
  - 22 • CO Monaghan and Appellant allowed inmate Simpson to use the “back room” and they  
23 received \$100.00.
  - 24 • CO Monaghan and Appellant warned inmate White that he was going on a “dry cell watch”  
25 and they received \$200.00.
- 26

1 2.11 After admitting the visiting room activities, CO Monaghan resigned from his Correctional  
2 Officer 2 position and was immediately escorted off the facility grounds.

3  
4 2.12 Later that day, when Mr. Hoover and Mr. Warner interviewed Appellant, he claimed the  
5 allegations were a lie and denied any knowledge of the activities in the visiting room. Appellant's  
6 response to CO Monaghan's statement was, "prove it." Mr. Hoover and Mr. Warner assigned  
7 Appellant to his home and had him escorted off the facility grounds.

8  
9 2.13 Mr. Hoover interviewed inmates Davis, Rice, White, and Simpson. All four inmates  
10 corroborated that money was exchanged for either "walk throughs" (which means they were not  
11 searched after visits) or for use of the "back room" with their female visitors. All four inmates  
12 provided written statements as requested by Mr. Hoover. The inmates told Mr. Hoover that CO  
13 Monaghan and Appellant were roommates who shared rent during the time of these alleged  
14 activities.

15  
16 2.14 Mr. Warner interviewed inmate White's girlfriend, Melanie Kelly, who reported that she  
17 brought money to the facility in exchange for inmate White's "dry cell watch" tip and also for  
18 having sex on one occasion in the "back room" with inmate White. Ms. Kelly stated that she  
19 brought the money in payments on numerous visits. Most of the time Ms. Kelly gave the payments  
20 to inmate White to pass on to CO Monaghan and Appellant. However, on one occasion she gave  
21 the money directly to either Appellant or CO Monaghan.

22  
23 2.15 In subsequent meetings, Appellant continued to deny his involvement in the activities. He  
24 acknowledged that he and CO Monaghan were roommates, and he claimed that CO Monaghan  
25 owed him rent money and may have been trying to "get back" at him.

1 2.16 On July 5, 2001, Appellant, Superintendent Moore, Human Resource Manager Bob Riordan,  
2 and Appellant's representatives met. The purpose of the meeting was to give Appellant an  
3 opportunity to provide any additional information he wished prior to a final decision regarding  
4 continued employment. Appellant continued to deny that he was involved in the visiting room  
5 activities.

6  
7 2.17 The Department of Corrections has developed an Employee Handbook dated June 1993,  
8 which states, in part, under the Code of Ethics portion on Page 2:

9  
10 High moral and ethical standards among correctional employees are essential for the success  
11 of the Department's programs. The Department of Corrections subscribes to a code of  
unfailing honesty ... and a commitment to professional ... service.

12  
13 2.18 The Employee Handbook also states, in part, under "Department Expectations" that  
14 employees of the Department of Corrections are expected to positively represent Washington State  
15 Government to everyone as the department's best public relations agents. Employees are also  
16 expected to serve each offender with appropriate concern for their welfare and with no purpose of  
17 personal gain. It clearly states that employees are not allowed to barter or make personal deals with  
18 offenders, offender families, or visitors.

19  
20 2.19 The Department of Corrections has also adopted Policy No. 801.005 that addresses  
21 employee relationships with offenders. The policy requires employees to have a professional  
22 relationship with offenders, manage their interactions with offenders in a professional manner at all  
23 times, and treat offenders with dignity and respect. Further, the policy prohibits personal and/or  
24 unofficial relationships with offenders. The "Gratuities" section states:

25 No employee may give or accept gifts, gratuities or favors, barter, or have any financial  
26 dealing with or for an offender, their family members, or close personal associates without

the written approval of the appointing authority. Gratuities include any form of property or service regardless of financial value.

2.20 By signature dated September 29, 1997, Appellant acknowledged his awareness of the department handbook and policy and agreed to become familiar with and have a thorough knowledge and understanding of their contents.

2.21 In addition to considering Appellant's responses to the allegations, Superintendent Moore reviewed Appellant's personnel file, the Employee Conduct Report, and the written statements of CO Monaghan, Ms. Kelly, and the four inmates to determine whether Appellant engaged in misconduct.

2.22 Superintendent Moore was not convinced by Appellant's denials because he was unable to provide any convincing reasons as to why CO Monaghan would fabricate his statements. Superintendent Moore found it impossible for Appellant not to have knowledge about the visiting room activities. Superintendent Moore concluded that Appellant was not credible.

2.23 Superintendent Moore determined that Appellant was involved in the visiting room activities because:

- CO Monaghan readily admitted to the activities when he was confronted.
- CO Monaghan implicated Appellant without coercion and little opportunity for personal gain in doing so.
- He found CO Monaghan's statements to be honest and credible.
- The statements provided by the inmates and Ms. Kelly were consistent enough with CO Monaghan's statements to show the visiting room activities had occurred and that Appellant had knowledge of the activities.
- The inmates and Ms. Kelly were not aware of the information that CO Monaghan provided.
- He is personally familiar with the visiting room.
- He carefully considered the assessment and opinion of Associate Superintendent Glebe.

1 2.24 Superintendent Moore was aware of some of the discrepancies in the inmate's statements;  
2 however, he found their statements to be adamant and clear. Therefore, he decided that the  
3 discrepancies did not override the evidence that supported Appellant's involvement in the visiting  
4 room activities.

5  
6 2.25 Superintendent Moore considered the serious nature of the misconduct, and concluded that  
7 Appellant's behavior was absolutely outrageous, and that his involvement in the activities placed  
8 the staff and inmates in serious jeopardy. Superintendent Moore believed that Appellant allowed  
9 inmates to be unsupervised and provided an opportunity for contraband such as drugs or weapons to  
10 enter the inmate population. In Superintendent Moore's opinion, Appellant engaged in an activity  
11 that he considered criminal by taking money from the inmates in exchange for favors.

12  
13 2.26 Superintendent Moore found that Appellant disregarded institution policies, compromised  
14 his safety and the safety of the institution, failed to adhere to the high moral and ethical standards  
15 expected of correctional employees, and showed favoritism to inmates. Superintendent Moore  
16 concluded that there was no place in the criminal justice system for employees who engaged in this  
17 kind of activity, and therefore he decided that dismissal was the appropriate sanction.

### 18 19 **III. ARGUMENTS OF THE PARTIES**

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21 3.1 Respondent argues that Appellant, as a correctional officer, had a duty to supervise inmates,  
22 prevent favoritism, refuse to engage in profiting from inmates, and prohibit the exchange of  
23 contraband. Respondent asserts that CO Monaghan was remorseful about the activities and had  
24 nothing to gain by fabricating a story to involve Appellant. Respondent also states that the inmates  
25 held no grudges against CO Monaghan or Appellant and had no motive for providing information  
26 about the visiting room activities for the purpose of retaliation. Respondent argues that Appellant



1 is not being truthful by claiming to have no knowledge of the visiting room activities. Respondent  
2 asserts that these events could not have happened to this extent without the knowledge and  
3 involvement of more than one person; therefore, it would have been virtually impossible for CO  
4 Monaghan to have acted alone.

5  
6 3.2 Appellant denies that he engaged in any of the alleged misconduct. Appellant states that he  
7 had no knowledge of the visiting room activities. Appellant asserts that the visiting room activities  
8 could have occurred while he was on a break or not at work while on sick leave. Appellant argues  
9 that even though he and CO Monaghan were roommates for a short period of time, it does not mean  
10 that Appellant was aware of CO Monaghan's misconduct at work. Appellant asserts that most of  
11 the staff members who were interviewed reported that they respected him, he was professional and  
12 trustworthy, and he was a good officer. Appellant argues that none of the staff members indicated  
13 that he was involved. Further, Appellant points out that staff members did not make similar  
14 positive statements about CO Monaghan. Appellant argues that he has a stellar employment record  
15 and no history of any disciplinary actions against him. Appellant asserts that the inmates, Ms.  
16 Kelly, and CO Monaghan are not credible, and the information provided by them was continually  
17 inconsistent.

#### 18 19 **IV. CONCLUSIONS OF LAW**

20  
21 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter.

22  
23 4.3 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
24 the charges upon which the action was initiated by proving by a preponderance of the credible  
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
26

1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
2 Corrections, PAB No. D82-084 (1983).

3  
4 4.4 The totality of the statements and testimony provided by CO Monaghan, Ms. Kelly, and the  
5 inmates corroborate that Appellant had knowledge of and was involved at some level in the  
6 activities occurring in the visiting room. We conclude that even if CO Monaghan had a reason to  
7 fabricate the allegations, it is not plausible that the inmates and Ms. Kelly would have had the  
8 opportunity to corroborate their stories with CO Monaghan, who was escorted off the institution  
9 grounds immediately after he was interviewed.

10  
11 4.5 Neglect of duty is established when it is shown that an employee has a duty to his or her  
12 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
13 of Social & Health Services, PAB No. D86-119 (1987).

14  
15 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
16 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
17 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
18 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

19  
20 4.7 Willful violation of published employing agency or institution or Personnel Resources  
21 Board rules or regulations is established by facts showing the existence and publication of the rules  
22 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
23 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

1 4.8 Appellant's unprofessional behavior was unacceptable and seriously interfered with  
2 Respondent's ability to carry out its mission, including its ability to control and redirect the  
3 behaviors of the inmates. Respondent has met its burden of proving by a preponderance of the  
4 credible evidence that Appellant neglected his duty and gross misconduct when he used his official  
5 position as a Correctional Officer to receive financial compensation for allowing inmates to engage  
6 in inappropriate activities.

7  
8 4.9 Respondent has proven that Appellant had knowledge of and understood DOC policies  
9 regarding appropriate interactions with offenders. Respondent has met its burden of proof that  
10 Appellant violated DOC Policy Directive 801.005, which, in part, prohibits any financial or  
11 personal deals with offenders. Appellant also failed to comply with the DOC Code of Ethics and  
12 the DOC Employee Handbook.

13  
14 4.10 In determining whether a sanction imposed is appropriate, consideration must be given to  
15 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
16 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
17 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
18 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
19 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

20  
21 4.11 Respondent has met its burden of proof by a preponderance of the credible evidence that  
22 Appellant neglected his duty, willfully violated agency policy, and that his actions constituted gross  
23 misconduct.

24  
25 4.12 Under the totality of the facts and circumstances, Respondent has met its burden of proving  
26 the charges in the disciplinary letter. In light of the egregious nature of Appellant's misconduct,

1 Respondent has established that the disciplinary sanction of dismissal was appropriate under the  
2 circumstances presented here. Therefore, the appeal should be denied.

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**V. ORDER**

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mark Ortiz is denied.

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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